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FF# 3c  
6-22-93

STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

P.O. BOX 47600 • Olympia, Washington 98504-7600 • (206) 459-6000

June 22, 1993

Keith Lund  
Burlington Environmental Inc.,  
Waterfront Place One  
1011 Western Ave, Suite 700  
Seattle WA 98104

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RCRA PERMITS SECTION

Dear Mr. Lund:

Re: Burlington Environmental Inc. (Burlington) Pier 91 facility permit appeal

As we agreed during our meeting of June 9, 1993, the Department of Ecology (Ecology) is providing further information concerning appealed portions of the Pier 91 facility permit. Enclosure 1 to this letter describes the current status of all of the issues of the appeal.

Based upon our discussions at the June 9 meeting, Ecology has reviewed the language of the draft letter concerning corrective action responsibilities (appeal item A). Ecology continues to believe that the use of the term "RCRA" is appropriately applied throughout the letter. In addition, the definition of the "facility" in the letter is consistent with that of the state only operational permit. A revised draft of the letter is provided as enclosure 2. The only change from the previous draft is the deletion of the phrase "and other legal requirements" as was agreed to by all parties at the June 9 meeting.

With regard to item B. (Use of accredited labs and exemption of certain waste streams from analysis), as we discussed on the phone on June 10, Ecology expects Burlington to provide a revised QA/QC plan. Upon approval of that plan, the agreed revised language for Permit Condition II.A.6. can be incorporated into the permit.

With regard to item C. (PCB analysis of each shipment of incoming waste), Burlington will revise the flow chart and provide supporting text, as discussed at the June 9 meeting. Ecology is providing suggested revised language for Permit Condition II.A.12. in order for it to reference the waste analysis plan. Ecology has also modified Burlington's previously suggested language so as to clearly include the requirement for testing of used oil.

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With regard to item F. (Clean closure requirements), both parties have agreed to language to be included in the settlement agreement. The agreed language is provided in Enclosure 1.

With regard to item G. (Tank compliance requirements), Burlington has provided a new containment/leak detection proposal based upon our discussions at the June 9 meeting. Ecology is currently reviewing this proposal, and will provide a response as soon as possible. Ecology reminds Burlington that the existing double bottom tanks at the Pier 91 facility are not in compliance with the permit and that Ecology makes no commitment to continue to exercise enforcement discretion.

Based upon the information being exchanged at this time it appears that both parties are close to agreement on all of the issues except the tank compliance requirements. Because Ecology is placing a high priority on the tanks, I expect that issue to be resolved soon as well. Consequently, it might be useful to begin work on the settlement agreement document itself. In the past Burlington has provided a first draft of the settlement agreement. As both parties have agreed on a document format for the Georgetown settlement, drafting an agreement for this facility should be fairly straightforward. If it is agreeable to Burlington, please provide a draft settlement agreement by July 7, 1993. Ecology will provide a draft permit addendum at that time for your review. If this arrangement is not agreeable to you, or should you have any other questions about the appeal, please give me a call at 459-6993.

Sincerely,



Douglas Brown  
Hazardous Waste Permits

Enclosures

cc: Stephanie Delaney, Attorney General's Office  
Doug Hotchkiss, Port of Seattle  
Julie Sellick, NWRO  
Carrie Sikorski, EPA Region 10  
Galen Tritt, NWRO



Pier 91 Appeal Issues  
Current Status (June 22, 1993)

**A. Designation of the Port as Permittee**

Burlington is concerned that the permit makes them solely responsible for facility wide corrective action. Ecology and EPA will provide clarification in a separate letter concerning the current and future responsibility of Burlington for corrective action.

**B. Required Use of Washington State Accredited Laboratory and Exemption of Certain Waste Streams from Lab Analysis**

Burlington will submit a revised Quality Assurance/Quality Control (QA/QC) Plan. If Ecology finds this plan acceptable, Ecology will agree to revise Permit Condition II.A.6. in order delete the requirement for use of a state certified laboratory. Both parties have agreed to the revised language for this permit condition.

As with the Georgetown facility agreement, both parties agree to add Permit Condition II.C.1.b.vi. so as to specify the retention time for laboratory audit records, with the provision that records may be maintained at Burlington corporate offices at Airport Way.

With regard to the exemption of certain waste streams from analysis, both parties have agreed to revised language for Permit Condition II.A.6. The agreed language adds II.A.6.d.ii., regarding bulk unused commercial chemical products, to Burlington's previously suggested language, (see April 28, 1993 letter C. Buller to D. Brown).

Agreed permit language:

- II.A.6. Each regulated generator waste stream which is received by the Permittee more than twice a year shall undergo annual full characterization. Full characterization is defined as completing a waste profile sheet which shall identify the dangerous constituents and characteristics necessary for proper designation and management of the waste stream, along with accounting for 100% of the material (e.g., 30% oil, 70% water).
- a. Except as specified in c. below, full characterization shall include or consist of:
    - i. Existing published or documented data on the dangerous waste or on waste generated from similar processes. The use of existing published

or documented data shall include confirmation by the generator that the process generating the dangerous waste has not significantly changed; or

- ii. Laboratory analysis of the waste stream consisting of chemical, physical, and/or biological analyses using methods which are approved by the Agency or Department. Wastes shall be analyzed for all hazardous constituents except those which can be demonstrated not to be present in any of that generator's waste streams, or those which do not change the proper designation and management of the waste stream.
- b. Analysis for the purposes of a.ii. above shall be performed by a laboratory which meets one of the following standards:
- i. The laboratory is accredited by Washington State under Chapter 173-50 WAC; or
  - ii. The laboratory meets the standards of the Quality Assurance Program Plan, Appendix C-3 of Attachment CC. Such a laboratory shall be audited by the Permittee every two years or whenever analyses for the purposes of full characterization are performed, whichever is longer.
    - A. If the Department determines that any laboratory utilized by the Permittee does not meet the requirements of the Quality Assurance Program Plan, the Department may issue a final decision requiring a new audit of that laboratory. The issuance of such a decision shall constitute an Agency action subject to the rights of appeal under Chapter 34.05 RCW.
    - B. Except for frequency, audits of laboratories by the Permittee shall be performed as specified in the Quality Assurance Program Plan.
- c. In the following circumstances a waste stream shall undergo full characterization consisting solely of laboratory analyses meeting the requirements of a.ii. above, and knowledge as necessary to designate a waste under WAC 173-303-080, Dangerous Waste Lists. Such characterization shall occur prior to receipt of the next shipment of that waste stream.
- i. The permittee has been notified, or has reason to believe, that the process or operation generating the dangerous waste has significantly changed;



- ii. There is a discrepancy between a generator's waste designation, as provided by the generator's waste profile and the Permittee's waste designation, as determined by the screening analysis and any further waste analysis;
  - iii. The first time a waste undergoes full characterization. This shall include but not be limited to all waste streams for which waste profiles are amended, such as pursuant to Permit Condition II.A.14.a.i.; and
  - iv. No more than five years from the last full characterization by laboratory analysis.
- d. The following wastes are exempt from the requirement of c. above, periodic full characterization by laboratory analysis only:
- i. Residue and debris from the clean up of spills or releases of:
    - A. A single known substance;
    - B. A commercial product; or
    - C. Other material for which a MSDS or waste profile can be provided;
  - ii. Bulk unused commercial chemical products (i.e., off-specification or outdated materials).

- II.C.1. b. vi. Records of laboratory audits pursuant to the Quality Assurance Program Plan, Appendix C-3 of Attachment CC, and Permit Condition II.A.6.b.ii. (may be by reference to records at the corporate office).

### C. PCB Analysis of Each Shipment of Incoming Waste

Ecology has agreed in principle that PCB analysis of outgoing waste may be satisfactory. Burlington has provided suggested language for Permit Condition II.A.12. as well as a flow chart identifying the procedures to be followed in the event PCB was identified in outgoing material (see June 2, 1993 letter K. Lund to D. Brown). At the June 9, 1993 meeting Ecology indicated that the flow chart should identify the action trigger level as the method detection limit not 50 ppm. The Port of Seattle also indicated that not only non-aqueous dangerous waste but also outgoing used oil should also be tested for PCB. Burlington agreed to make both of these changes to the flow chart. Burlington will also provide additional explanatory text to support the flow chart. Upon agreement to their contents, the text and chart

will be incorporated into the waste analysis plan. Ecology also has indicated that Permit Condition II.A.12. will need to reference these procedures which will be found in the waste analysis plan.

Ecology is providing suggested revised language for Permit Condition II.A.12. in order for it to reference the waste analysis plan. In addition, Ecology has modified Burlington's previously suggested language so as to clearly include the requirement for testing of used oil.

Ecology's suggested language:

- II.A.12. The non-aqueous phase of each outgoing shipment of used oil, used oil fuel, and dangerous waste generated at the facility shall be sampled and analyzed for the presence of PCBs, using the PCB Analysis as defined in Attachment CC. Should detectable levels of PCBs be identified in any such outgoing shipment, the source of the PCBs will be identified and contaminated materials will be disposed of in accordance with procedures in Attachment CC.

**D. Ignitability Testing Requirements**

Both parties have agreed to retain the original language of Permit Condition II.A.16.

**E. Maintenance of Certain Records at the Facility**

Both parties have agreed to revised language for Permit Condition II.C.1.d.v.

Agreed permit language:

- II.C.1. d. v. All closure, interim measures, and final corrective action cost estimates; financial assurance documents prepared pursuant to this Permit; as well as the company names and addresses of Permittee insurers (may be by reference to records at the corporate office);

**F. Clean Closure Requirements**

Burlington has requested clarification regarding the relationship of the closure standard of Permit Condition II.D.7., which requires the removal of *all* waste constituents, and the approved closure plan which has a limited list of analytes. Ecology and EPA have explained that by implementing the approved plan Burlington can demonstrate clean closure and can meet the closure standard of Permit Condition II.D.7. Ecology has agreed to include language to this effect in the appeal settlement agreement. Both parties have agreed to Ecology's suggested language (see June 1, 1993 letter D. Brown to K. Lund) with one minor revision.



Agreed settlement language:

Implementation by Burlington of the approved closure plan, Attachments HH and LL to the permit, can achieve the clean closure standards of Permit Condition II.D.7. Permit Condition II.D.8. specifies that sampling and analysis for the purposes of closure shall be in accordance with Attachments HH and LL. Additional sampling and analysis for all waste constituents listed in WAC 173-303-9905 is not required by Permit Condition II.D.7. However, pursuant to WAC 173-303-830(3)(a)(ii), (v), and -610(3)(b)(iv), Ecology may require modification of the closure plan in the event of new information; changes in facility design, operations, or expected year of closure; or unexpected events at the time of closure. Two examples of instances which are sufficient cause for Ecology to require modification of the closure plan are specified in Permit Condition II.D.8.

**G. Tank Compliance Requirements**

Burlington proposed a new design for a leak detection system for the existing double bottom tanks (2705-2708) at the facility (see May 21, 1993 letter J. Stiller to D. Brown). Ecology had significant concerns about this proposal. After discussion at the June 9, 1993 meeting, Burlington has provided another alternative proposal. Ecology is currently reviewing that proposal.

**H. Construction Schedule**

Both parties have agreed to revised language for Permit Condition IV.B.1.

Agreed permit language:

IV.B.1. Construction related activities identified below shall be performed within the time specified.

- a. The loading/unloading pad shall be completed within seven (7) months of the permit effective date.
- b. The following activities shall be completed within 60 months of the permit effective date. The Permittee shall notify the Department at least 120 days prior to the initiation of construction.
  - i. Area A (See Figure IV-1):
    - A. Upgrade secondary containment to meet Permit requirements;
    - B. Remove tanks 106 and 108; and

- C. Install tanks 2702 and 2704.
- ii. Area B (See Figure IV-1):
  - A. Upgrade secondary containment to meet Permit requirements; and
  - B. Retrofit double bottoms on tanks 2701 and 2703.
- iii. Area C (See Figure IV-1):
  - A. Upgrade secondary containment to meet Permit requirements;
  - B. Install tanks 2307, 2308, 2309, and 2310; and
  - C. Place tanks 2709 and 2710 into service. Tank 2709 shall be designed and constructed in accordance with all specifications in Figure D1-11, Attachment II; Drawings 43007 and 44006, Appendix D-8 of Attachment II; and the structural and corrosion integrity assessments of Appendix D-9 of Attachment II.

#### **I. General Compliance Requirements**

Both parties have agreed to revised language for Permit Condition IV.C.4.

##### Agreed permit language:

- IV.C.4. Upon request by the Department, the Permittee shall submit samples of waste or environmental media for analysis by an independent, accredited laboratory. The Department may require analysis for any waste constituent, characteristic, or criteria which has a reasonable possibility of being present. Submittals under this provision shall be limited to two (2) events per year, and 12 samples per event. Requests by the Department under this provision shall constitute an Agency action subject to the rights of appeal under Chapter 34.05 RCW.



DRAFT

June 22, 1993

Keith Lund  
Burlington Environmental Inc.,  
Waterfront Place One  
1011 Western Ave, Suite 700  
Seattle WA 98104

Dear Mr. Lund:

Re: Corrective action responsibility at the Burlington Environmental Inc. (Burlington)  
Pier 91 facility

As we discussed in our meeting on April 7, 1993, the Department of Ecology (Ecology) and the Environmental Protection Agency (EPA) are providing clarification as to Burlington's responsibility for corrective action at the Pier 91 facility. Burlington has raised concerns that the current "state only" Dangerous Waste Facility Permit implies Burlington is solely responsible for corrective action at the entire Terminal 91 facility. This "facility", as defined in the state permit, constitutes all contiguous property owned by the Port of Seattle at Piers 90 and 91. This "facility" encompasses approximately 124 acres. Within this area, Burlington currently leases approximately four acres (the Premises) from the Port of Seattle. Note that the Premises include structures and leased underground piping. Less than two acres of the Premises are permitted by the state for continued waste management operations. The remainder of the Premises will remain Burlington's responsibility for purposes of corrective action and closure. The implication that Burlington has primary responsibility for the approximately 120 acres outside the boundaries of the Premises is not Ecology's or EPA's intent.

Ecology and EPA recognize that Burlington's responsibility for corrective action is limited to contamination on the premises, contamination originating on the premises that has migrated outside the premises, and any other contamination outside the Premises that occurred as a result of Burlington's operations. As such Ecology and EPA expect that Burlington will comply with the existing RCRA Section 3008(h) order covering the Premises until RCRA corrective action requirements relating to permitted facilities under RCRA Section 3004(u) are in effect under the final RCRA/HSWA Permit. With respect to contamination on property surrounding the Premises owned and controlled by the Port of Seattle, to the extent such contamination does not originate from the Premises or Burlington's operations, the Port of Seattle will bear corrective action responsibility. The

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HSWA permit to be issued by EPA will delineate the RCRA corrective action responsibilities of Burlington and the Port of Seattle, and both parties may participate in the comment and appeal process set forth in 40 CFR Part 124 at the time that permit is issued.

We hope that this letter provides sufficient clarification of your corrective action responsibilities at Pier 91. If you have any further questions please contact Doug Brown at Ecology at 459-6993 or Christy Ahlstrom at 553-8506.

Sincerely,

Gerald Lenssen, Supervisor  
Hazardous Waste Permits

Carrie Sikorski, Chief  
RCRA Permits Section

cc: Stephanie Delaney, Attorney General's Office  
Doug Hotchkiss, Port of Seattle  
Julie Sellick, NWRO  
Galen Tritt, NWRO